

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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Steven B. Rosenfeld
Chair/Board Member

June 3, 2011

Monica Blum
Board Member

Andrew Irving
Board Member

Burton Lehman
Board Member

FOR IMMEDIATE RELEASE

**FORMER RENT GUIDELINES BOARD MEMBER AND FORMER
DEPARTMENT OF EDUCATION EMPLOYEE EACH FINED FOR
FAILING TO FILE THEIR FINANCIAL DISCLOSURE REPORTS FOR
MULTIPLE YEARS**

Mark Davies
Executive Director

Wayne G. Hawley
*Deputy Executive Director
& General Counsel*

Carolyn Lisa Miller
Director of Enforcement

Julia Davis
*Special Counsel &
Director of Financial
Disclosure*

Alex Kipp
*Director of Training &
Education*

Ute O'Malley
*Director of
Administration*

Derick Yu
*Director of Information
Technology*

On May 23, 2011, the New York City Conflicts of Interest Board (the "Board") issued Findings of Facts, Conclusions of Law, and Orders assessing a \$5,000 civil penalty against a former member of the Rent Guidelines Board ("RGB") for failing to file financial disclosure reports for 2008 and 2009, and assessing a \$3,500 penalty against a former employee of the Department of Education ("DOE") for failing to file financial disclosure reports for 2008, 2009, and 2010.

New York City Administrative Code § 12-110(b) requires the annual filing of a financial disclosure report by various categories of public servants, including, among others, elected officials, agency heads, compensated members of City boards and commissions, and policymakers. The former RGB member was required to file as a compensated member of a board and the former DOE employee was required to file as a policymaker. Administrative Code § 12-110(g) imposes penalties up to \$10,000 for the intentional failure to file a financial disclosure report.

The former RGB member failed to file her financial disclosure reports for calendar years 2008 and 2009, despite numerous reminders from both the Board and RGB of both her obligation to file and the deadline for filing. The Board's total assessment of \$5,000 included a penalty of \$2,000 for the former RGB member's intentional failure to file her financial disclosure report for calendar year 2008, after the Board waived late fees for the late filing of her financial disclosure reports for 2006 and 2007, and a penalty of \$3,000 for her second intentional failure to file her financial disclosure report, for calendar year 2009.

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The former DOE employee failed to file her financial disclosure reports for calendar years 2008, 2009 and 2010, despite numerous reminders of both her obligation to file and the deadline for filing. The Board's total assessment of \$3,500 included a penalty of \$1,000 for her intentional failure to file a financial disclosure report for calendar year 2008, a penalty of \$1,500 for her second intentional failure to file a financial disclosure report for calendar year 2009, and a penalty of \$1,000 for her third intentional failure to file a financial disclosure report for calendar year 2010.

The enforcement actions against the two former public servants were prosecuted at the Office of Administrative Trials and Hearings ("OATH"). Copies of the Board's Findings of Facts, Conclusions of Law, and Orders, as well as the Reports and Recommendations of the OATH Administrative Law Judges, are attached; they are also available on the Board's website.

The Conflicts of Interest Board is the City's ethics board and is responsible for enforcing, among other laws, Administrative Code § 12-110, the City's financial disclosure law. The Board is composed of five members, appointed by the Mayor with the advice and consent of the City Council.

Julia Davis, Director of Financial Disclosure and Special Counsel, and Joanne Giura-Else, Deputy Director of Financial Disclosure, handled the cases for the Board. The Board gratefully acknowledges the assistance of the Rent Guidelines Board's Executive Director, Andrew McLaughlin, and the Department of Education's Ethics Officer, Senior Counsel, and Financial Disclosure Liaison, Samantha Biletsky, for their assistance with the proceedings.

The Board does not comment on Board dispositions, except as set forth above.

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

_____ X

In the Matter of

RISA LEVINE

COIB Case No. FD 2010-001

OATH Index No. 956/11

Respondent.

_____ X

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and of the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings (“OATH”), the Conflicts of Interest Board (the “Board”) hereby adopts the annexed Report and Recommendation of OATH dated January 28, 2011 (the “Report”), in the above-captioned matter except as set forth below, and the Board hereby makes the following Final Findings of Fact and Conclusions of Law:

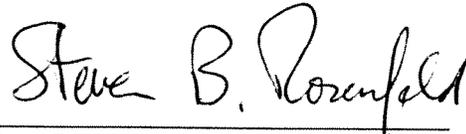
1. Respondent was required by Section 12-110 of the Administrative Code of the City of New York to file financial disclosure reports for 2008 and 2009.
2. Respondent was notified on numerous occasions, both orally and in writing, that she must file these reports but failed to file them.
3. Respondent filed her financial disclosure reports for 2006 and 2007 late and the Board waived the applicable late fees.
4. Despite receiving multiple written notices, Respondent failed to attend a hearing on January 13, 2011, before Administrative Law Judge Alessandra F. Zorigniotti, which proceeded in the absence of her appearance.
5. Respondent’s failures to file these reports were intentional and constituted intentional violations of Section 12-110.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Section 12-110(g)(2) of the Administrative Code of the City of New York and Section 2603 of the New York City Charter, that Respondent be assessed civil penalties in the amount of \$5,000, (\$2,000 for her first intentional violation of Section 12-110 for calendar year 2008, after the Board waived applicable

late fees in 2006 and 2007, and \$3,000 for her second intentional violation of Section 12-110 for calendar year 2009) to be paid to the Conflicts of Interest Board within 30 days of service of this Order. The Report characterizes the recommended \$5,000 sum as both a fine and a penalty. Fines, however, are provided for by Section 12-110(g)(1) for the late filing of a report, in contrast with the civil penalties provided for by Section 12-110(g)(2) for, inter alia, the intentional failure to file a report, so that to the extent that the Report references fines it is not adopted.

Respondent has the right to appeal this Order to the Supreme Court of the State of New York by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

The Conflicts of Interest Board

A handwritten signature in black ink that reads "Steve B. Rosenfeld". The signature is written in a cursive style with a horizontal line underneath the name.

By: Steven B. Rosenfeld, Chair

Monica Blum
Angela Mariana Freyre
Andrew Irving
Burton Lehman

Dated: May 23, 2011

Attachment

Conflicts of Interest Bd. v. Levine

OATH Index No. 956/11 (Jan. 28, 2011)

Following default hearing ALJ found that a former Rent Guidelines Board member intentionally failed to file 2008 and 2009 financial disclosure reports. ALJ recommended a \$5,000 fine.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of

CONFLICTS OF INTEREST BOARD

Petitioner

- against -

RISA LEVINE

Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORGNIOTTI, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board, brought this civil penalty proceeding under Chapter 68 of the New York City Charter (“Charter”) and Title 53 of the Rules of the City of New York (“RCNY”). The Board alleges that Risa Levine, a former Rent Guidelines Board member, was required by section 12-110 of the Administrative Code to file annual financial disclosure reports for calendar years 2008 and 2009 and that she failed to do so (ALJ Ex. 1).

Respondent failed to answer the petition, and did not appear for the hearing scheduled for January 13, 2011. The record established that the petition and notice of hearing were served on respondent at her last known address by first class and certified mail, return receipt requested (Pet. Exs. 6-11), as required by 53 RCNY section 2-05(c) (Lexis 2009). Such evidence established the jurisdictional prerequisites for finding respondent in default and the matter proceeded in the form of an inquest.

The petition and notice of hearing also advised respondent of her time to file an answer, the consequences of the failure to answer, the right to representation, and the consequences of a failure to appear at trial (ALJ Ex. 1). Under petitioner’s rules, respondent’s failure to answer the petition constituted an admission to all of the allegations contained therein. Petitioner was required only to “submit for the record an offer of proof” of the pertinent facts. 53 RCNY § 2-

02(c)(3); *see also Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 2406/00 2412/00 & 2415/00 (Oct. 12, 2000). Petitioner produced testimony and documentary evidence showing that respondent was obligated to file financial disclosure forms in 2008 and 2009 and that she failed to do so.

I find that petitioner proved the charges and recommend a fine in the amount of \$5,000.

ANALYSIS

At all times relevant to this action, respondent was a member of the Rent Guidelines Board (Pet. Exs. 12, 13; Tr. 31). Because respondent was a compensated board member and a policy maker (Tr. 11, 15, 35-36, 41), she was required to file an annual financial disclosure report with the Board. Admin. Code § 12-110(b)(3)(a) (Lexis 2009).

Mr. McLaughlin testified that he is the executive director of the Rent Guidelines Board and is responsible for distributing financial disclosure packages to board members (Tr. 33). On June 4, 2009, and May 16, 2010, respondent signed for and received financial disclosure packages for 2008 and 2009, respectively (Tr. 37, 40; Pet. Exs. 1, 5). In addition, Mr. McLaughlin sent an email message to board members, including respondent, on May 20, and July 6, 2009, reminding them of their obligation to file the disclosure forms (Tr. 36; Pet. Exs. 14, 16). Mr. McLaughlin testified that the duty to file 2008 and 2009 disclosure statements was also discussed at Rent Guidelines Board meetings on June, 4, 2009, March 23, 2010, and April 16, 27, and 30, 2010. Respondent was present for these meetings (Tr. 38-39, 41-47; Pet. Exs. 15, 17-20). Mr. McLaughlin further stated that he spoke personally to respondent about filing her disclosure report in 2009 because she had failed to do so in 2008 (Tr. 47).

Ms. Giura-Else, the Deputy Director of the Financial Disclosure Unit, testified that petitioner compiled a list of all city employees, including respondent, who were required to file financial disclosure reports for the calendar years 2008 and 2009, but failed to do so. The list of non-filers was created from a database concerning disclosure reports (Tr. 13-17). Ms. Giura-Else also testified that respondent filed her disclosure forms in 2006 and 2007 late and that both times the late fees were waived (Tr. 29-30).

Petitioner mailed three letters to respondent notifying her of the failure to file disclosure forms in 2008 and 2009 in violation of the Administrative Code and offering respondent the opportunity to file the reports and pay the late filing fines, or face a civil penalty up to \$10,000

(Tr. 20-26; Pet. Exs. 2-4). Between October 14 and November 29, 2010, petitioner mailed respondent three trial notices again informing her of the violations and the opportunity to correct them or face larger penalties at trial (Tr. 26-29; Pet. Exs. 6-11).

Given respondent's actual knowledge of the obligation to file timely annual financial disclosure reports and her receipt of the packages in 2008 and 2009, it is reasonable to infer that her failure to file in 2008 and 2009 was intentional. Therefore, the charges are sustained.

FINDINGS AND CONCLUSIONS

1. Respondent was properly served with the charges and notice of hearing.
2. Respondent intentionally failed to file 2008 and 2009 financial disclosure reports as required by section 12-110 of the Administrative Code.

RECOMMENDATION

The financial disclosure requirement of section 12-110 of the Administrative Code was enacted to deter corruption and conflicts of interest and to enhance confidence in the integrity of government. *See Barry v. City of New York*, 712 F.2d 1554, 1560 (2d Cir. 1983); *see also Conflicts of Interest Bd. v. Nine Public Servants*, OATH Index No. 363/95, 381/95, 390/95, 396/95, 399/95, 407/95, 410/95, 411/95, 416/95 (Nov. 14, 1994) ("The financial disclosure requirements serve important public policies of open and honest government.").

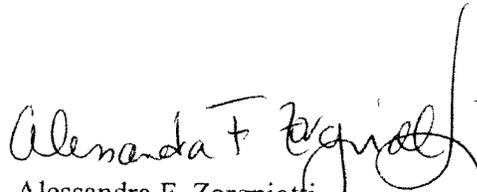
Under the Administrative Code, the maximum fine for a violation of the financial disclosure law is \$10,000. Admin. Code § 12-110(g)(1) (Lexis 2009). In addition to a \$10,000 fine, a willful violation constitutes a misdemeanor punishable by imprisonment for up to one year as well as removal from office as provided by law. Admin. Code § 12-110(g)(2). The factors to be considered when determining a fine include whether the person failed to timely file in prior years and the length of the delay in filing. Admin. Code § 12-110(g)(1).

As demonstrated by the record, petitioner and Mr. McLaughlin repeatedly notified respondent of her obligations to file reports in 2008 and 2009. As of the hearing date, respondent had failed to do so. Moreover, respondent filed late in 2006 and 2007 and had the late filing fees waived. Thus, respondent's willful violation of the reporting provisions of section 12-110 of the Administrative Code warrants a stern penalty.

Counsel for petitioner asks that I recommend imposition of a fine of \$5,000 for both violations. The Board has sometimes implemented a graduated penalty where the maximum civil penalty of \$10,000 is imposed, with the opportunity to have the fine reduced to \$7,500 if the report is filed within one year of service of the Board's final order, \$5,000 if filed within nine months, \$2,500 if filed within six months, or \$1,500 if filed within 60 days. *See e.g. Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 361/04, 366/04 & 370/04 (Nov. 6, 2003), *adopted, Conflicts of Interest Bd. Case No. FD2003-8* (Dec. 15, 2003); *Conflicts of Interest Bd. v. Two Individual Respondents*, OATH Index Nos. 1624/98 & 1634/98 (Sept. 2, 1998). The Board has also imposed fixed fines. *See Conflicts of Interest Bd. v. Two City Council Candidates*, OATH Index Nos. 902/93 & 143/93 (July 7, 1993) (\$2,500 fines for candidates for city council who failed to file financial disclosure forms); *Conflicts of Interest Bd. v. Seventeen City Council Candidates*, OATH Index Nos. 142/93-161/93 (Oct. 5, 1992) (same).

Given that respondent has had two prior late filing fees waived and intentionally failed to file her financial disclosure reports on two subsequent occasions, a fixed penalty rather than a graduated is reasonable. Because respondent did not appear at the hearing, no mitigating circumstances were presented and none are apparent from the record.

Under the circumstances, petitioner's requested penalty of \$2,500 for each violation is reasonable. Accordingly, I recommend that a \$5,000 penalty be imposed on respondent for her failure to file financial disclosure reports in 2008 and 2009.


Alessandra F. Zorziotti
Administrative Law Judge

January 28, 2011

SUBMITTED TO:

STEVEN B. ROSENFELD
Chair

APPEARANCES:

JULIA DAVIS, ESQ.
Attorney for Petitioner

No Appearance for Respondent

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

X

In the Matter of

DENISE MUTLU

COIB Case No. FD 2010-003

OATH Index No. 957/11

Respondent.

X

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and of the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings ("OATH"), the Conflicts of Interest Board (the "Board") hereby adopts the annexed Report and Recommendation of OATH dated February 2, 2011 (the "Report"), in the above-captioned matter except as set forth below, and the Board hereby makes the following Final Findings of Fact and Conclusions of Law:

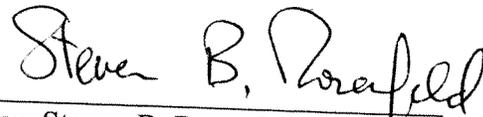
1. Respondent was required by Section 12-110 of the Administrative Code of the City of New York to file financial disclosure reports for 2008, 2009, and 2010.
2. Respondent was notified on numerous occasions, both orally and in writing, that she must file these reports and also conceded her obligation to file such reports and agreed to do so. Nevertheless, she failed to file them.
3. Despite receiving multiple written notices, Respondent failed to attend a hearing on January 20, 2011, before Administrative Law Judge Tynia D. Richard, which proceeded in the absence of her appearance.
4. Respondent's failures to file these reports were intentional and constituted intentional violations of Section 12-110.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Section 12-110(g)(2) of the Administrative Code of the City of New York and Section 2603 of the New York City Charter, that Respondent be assessed civil penalties in the amount of \$3,500 (\$1,000 for her first intentional violation of Section 12-110 for calendar year 2008, \$1,500 for her second intentional violation of Section 12-110 for calendar year 2009, and \$1,000 for her intentional violation of

Section 12-110 for the terminal City service report due in 2010) to be paid to the Conflicts of Interest Board within 30 days of service of this Order. The Report characterizes the recommended \$3,500 sum as "fines." Fines, however, are provided for by Section 12-110(g)(1) for the late filing of a report, in contrast with the civil penalties provided for by Section 12-110(g)(2) for, inter alia, the intentional failure to file a report, so that to the extent that the Report references fines it is not adopted.

Respondent has the right to appeal this Order to the Supreme Court of the State of New York by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

The Conflicts of Interest Board



By: Steven B. Rosenfeld, Chair

Monica Blum
Angela Mariana Freyre
Andrew Irving
Burton Lehman

Dated: May 23, 2011

Attachment

Conflicts of Interest Bd. v. One Public Servant

OATH Index No. 957/11 (Feb. 2, 2011)

In a civil penalty proceeding, on default, respondent was found guilty of intentionally failing to file disclosure reports in 2008, 2009, and 2010, and failing to pay statutory late fees for each year. ALJ recommended fines of \$1,000, \$1,500, and \$1,000, for each year, respectively.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CONFLICTS OF INTEREST BOARD
Petitioner
- against -
ONE PUBLIC SERVANT¹
Respondent

REPORT AND RECOMMENDATION

TYNIA D. RICHARD, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board (the “Board”), brought this civil penalty proceeding under the Administrative Code, Chapter 68 of the New York City Charter (“Charter”) and Title 53 of the Rules of the City of New York (the “Board’s rules”). *See* Admin. Code § 12-110; Charter § 2603(h); 53 RCNY § 2-03(a). The petition charges that respondent, formerly an employee of the Department of Education (“Department”), was required by section 12-110 of the Administrative Code to file financial disclosure reports for calendar years 2008, 2009, and 2010, and that she intentionally failed to do so. Further, the petition charges that, having failed to file the disclosure within one week of the filing deadline in each calendar year, she is required to pay late filing fines for each year.

Respondent failed to answer the petition and did not appear at the hearing scheduled for January 20, 2011. The record established that the petition and notice of hearing were served

¹ The identity of a person charged with a violation of the City’s ethics rules is confidential unless and until the Board issues a final determination against such person. 53 RCNY § 2-05(f) (Lexis 2009). Therefore, in order to permit use of this Report and Recommendation for public purposes, names or other identifying data are omitted. Supplementing this Report and Recommendation is a memorandum that will not be made public which separately states my recommended disposition as to this respondent. The trial transcript and exhibits also are confidential to the extent that they contain respondent’s name or other identifying information.

properly on respondent at her last known address by first class mail and by certified mail, return receipt requested (Pet. Exs. 5, 6). 53 RCNY § 2-05(c) (Lexis 2009). Such evidence established the jurisdictional prerequisites for finding respondent in default, and the matter proceeded as an inquest.

On the record before me, I find that petitioner proved the charges and recommend that fines be imposed in the amount of \$1,000, \$1,500, and \$1,000 for calendar years 2008, 2009, and 2010, respectively.

ANALYSIS

Under the Board's rules, respondent's failure to answer the petition constitutes an admission of all the allegations contained therein. Thus, petitioner was required only to "submit for the record an offer of proof" of the pertinent facts. 53 RCNY § 2-02(c)(3) (Lexis 2009). At the hearing, petitioner presented the testimony of two witnesses, who testified to respondent's filing status, the notices sent to her, and her failure to file.

Samantha Biletsky, Ethics Officer, Senior Counsel, and Financial Disclosure Liaison for the Department of Education, testified that she identified respondent as an employee required to file financial disclosure reports for calendar years 2008, 2009, and 2010 (Tr. 41, 50; ALJ Ex. 1 at 3). *See* Admin. Code § 12-110(b)(3)(a)(2). Joanne Giurga-Else, Deputy Director of the Board's Financial Disclosure Unit, testified that respondent failed to file in all three years (Tr. 25, 33, 37). They identified numerous documents – sign-out sheets indicating receipt of the filing packet (Pet. Exs. 7, 10), official notices (Pet. Exs. 8, 9, 11), email notices (Pet. Exs. 12, 13), and other email communications with respondent (Pet. Exs. 14-20) – indicating that respondent was given ample notice of her obligation to file for calendar years 2008, 2009, and 2010, and of the consequences for not filing. Ms. Biletsky, who had a phone conversation and numerous email communications with respondent counseling her about her obligation to file and the procedure for filing, said respondent conceded her obligation and agreed to file (Tr. 54-56). Yet, she did not. Not only did respondent fail to file in those years but she also failed to pay the statutory late filing fines.²

Given respondent's presumptive receipt of notices of her obligation to file financial disclosure reports, it is proper to infer that her failure to file and to pay the late filing fine was

² Respondent left her position with the Department on September 26, 2010 (Tr. 37). Employees separating from service are required to file for the portion of the last calendar year in their position (Tr. 60). *See* Admin. Code § 12-110(b)(3)(b)(1).

intentional. Moreover, respondent also received notice of this proceeding and failed to appear and defend herself against the charges. Therefore, I find that the petition is sustained.

FINDINGS AND CONCLUSIONS

1. Respondent was served with the petition and notice of trial.
2. Respondent was required to file a financial disclosure report for calendar years 2008, 2009, and 2010, on or before established deadlines, and has failed to file any such reports to date.
3. Respondent was timely notified of her obligation to file her financial disclosure reports.
4. Respondent intentionally failed to file her 2008, 2009, and 2010 financial disclosure reports with petitioner on or before the required deadlines, and she has failed to file such reports to date.

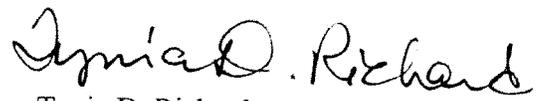
RECOMMENDATION

The financial disclosure requirements serve important public policies of open and honest government. As demonstrated by the record in this proceeding, petitioner has made diligent efforts to notify respondent of her obligation to file financial disclosure reports and of her obligation to pay the statutory late filing fines. Thus, respondent's willful violation of the reporting provisions of section 12-110 of the Administrative Code warrants a stern penalty.

Under the Administrative Code, any person required to file who has not filed at the end of one week after the date required for filing is subject to a fine of not less than \$250 or more than \$10,000. Admin. Code § 12-110(g)(1). An intentional violation is punishable by imprisonment of not more than one year, or by a fine not to exceed \$1,000, or both. Admin. Code § 12-110(g)(2). For respondent's intentional failure to file in calendar years 2008, 2009, and 2010, petitioner has asked that I recommend the imposition of fines in the amounts of \$1,000, \$1,500, and \$1,000, respectively. A civil penalty is not sought (Tr. 60). *See* Admin. Code § 12-110(g)(2) ("any intentional violation of the provisions of this section may subject the person reporting to assessment by [the Board] of a civil penalty in an amount not to exceed ten thousand dollars.").

The fines sought by the Board are provided for under the statute and are even lighter than some imposed in past cases. See *Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 361/04, 366/04 & 370/04 (Nov. 6, 2003) (\$10,000 penalty assessed on non-filer (who failed to file financial disclosure report); late filers assessed \$1,000 for late filing and failure to pay the late filing fine); *Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 2406/00, 2412/00 & 2415/00 (Oct. 12, 2000), Board Dec. (July 30, 2001) (\$10,000 penalty assessed on non-filers; ALJ recommendation of \$500 penalty for late filer who failed to pay the statutory late fine was rejected by the Board which imposed \$1,000 fine); *Conflicts of Interest Bd. v. Nine Public Servants*, OATH Index Nos. 363/95, 381/95, 390/95, 396/95, 399/95, 407/95, 410/95, 411/95 & 416/95 (Nov. 14, 1994) (late filers assessed \$1,000 penalty for late filing and refusing to pay late filing fee).

For respondent's intentional failure to file her financial disclosure report in calendar years 2008, 2009, and 2010, and her failure to pay statutory late filing fine, I recommend that fines be assessed in the amounts of \$1,000, \$1,500, and \$1,000, respectively.


Tynia D. Richard
Administrative Law Judge

February 2, 2011

SUBMITTED TO:

STEVEN B. ROSENFELD
Chair

APPEARANCES:

JULIA DAVIS, ESQ.
Attorney for Petitioner

No Appearance by Respondent